

JOSEPH E. DUNNE III
COLBY M. MAY*

*ALSO ADMITTED IN VIRGINIA

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RICHARD G. GAY
OF COUNSEL

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December 11, 1992

HAND DELIVER

RECEIVED

DEC 11 1992

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ATTN: The Honorable Joseph P. Gonzalez

RE: KCBX, Inc. et al., MM Docket No. 92-186, San Luis Obispo,
California

Dear Ms. Searcy:

Transmitted herewith on behalf of KCBX, Inc. (KCBX) and Logos Broadcasting Corporation (Logos), the applicants in the above-referenced docketed hearing proceeding, is an original and six copies of their: "Joint Request for Approval of Agreement;" "Settlement Agreement;" and, ancillary documents required by section 73.3525 of the Commission's Rules.

The enclosed documents set forth the applicants' agreement to settle their mutually exclusive hearing proceeding and provides for the dismissal of KCBX' application and the grant of Logos' conditioned upon the Commission's approval of Logos' payment of KCBX' legitimate and prudent expenses.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: Joseph E. Dunne III
Joseph E. Dunne III
Attorney for Logos Broadcasting
Corporation

JED:gmc:A17
enclosures
xc: All Per Attached Certificate of Service
Dan Lemburg

No. of Copies rec'd
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DEC 11 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of) MM Docket No. 92-186
KCBX, INC.)
Channel 207B) File No. BPED-890619MH
San Luis Obispo, California)
LOGOS BROADCASTING CORPORATION)
Channel 207B) File No. BPED-910219MJ
San Luis Obispo, California)
For Construction Permit for a)
New Noncommercial FM Station)
TO: The Honorable Joseph P. Gonzalez	
Administrative Law Judge	

JOINT REQUEST FOR APPROVAL OF AGREEMENT

Logos Broadcasting Corporation ("Logos") and KCBX, Inc. (KCBX) (jointly, "Petitioners"), pursuant to section 73.3525(a) of the Commission's rules and regulations, 47 C.F.R. § 73.3525(a) (1992), hereby petition the Commission for approval of the attached Agreement which contemplates the dismissal of KCBX' application. In support of their request, the Petitioners show and state as follows:

1. This request involves two mutually exclusive applications for a noncommercial FM station on channel 207B to serve San Luis Obispo, California. The applications have been designated for hearing in a Hearing Designation Order (MM Docket No. 92-186). DA 91-1709 (released August 19, 1992), and the parties are due to complete discovery and exchange a preliminary engineering exhibit

on November 30, 1992 pursuant to the Judge's Order, FCC 92M-1015 (released October 22, 1992).

2. The Petitioners have entered into an agreement (Exhibit A) which provides that KCBX, in return for the dismissal of its application for channel 207B, San Luis Obispo, California, will receive the reimbursement of its legitimate and prudent expenses up to a total amount of \$18,000.00, or such lesser amount as approved by the Commission, all as specified in the Settlement Agreement.

3. Verified statements required by Section 73.3525 of the Commission's rules are attached as Attachment A to the Settlement Agreement, attesting to the fact that: the applications were not filed for the purpose of reaching or carrying out a settlement agreement; the only consideration to be paid or promised the dismissing applicant is fully set forth in the Settlement Agreement; and, the dismissing applicant will not receive in consideration an amount greater than its legitimate and prudent expenses.


4. Prompt approval of this Agreement is in the public interest since it will remove the mutual exclusivity between the Petitioners, thereby allowing the expeditious grant of Logos' application, conserving the Commission's limited administrative resources and ensuring the speedy inauguration of the local non-

commercial radio service to residents of San Luis Obispo and the service area.

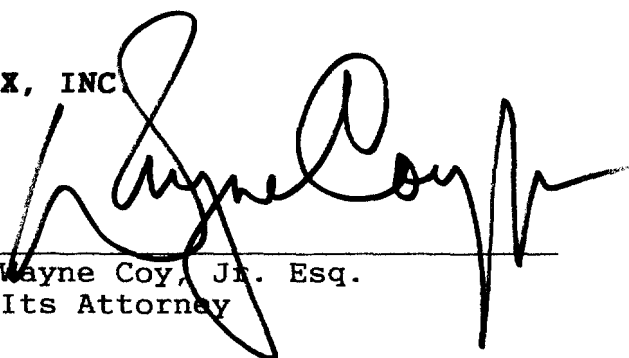
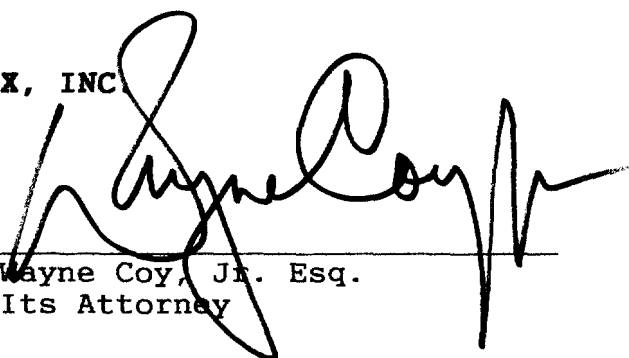
WHEREFORE, the premises considered, it is respectfully requested that: the instant Petition be granted; the Settlement Agreement submitted herewith be approved; the application of KCBX, Inc. be dismissed with prejudice; and, the application of Logos Broadcasting Corporation be expeditiously granted.

Respectfully submitted,

LOGOS BROADCASTING CORPORATION

By: 
Joseph E. Dunne III
Its Attorney

MAY & DUNNE, CHARTERED
Suite 520
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
(202) 298-6345

KCBX, INC. 
By: 
Wayne Coy, Jr. Esq.
Its Attorney

COHN & MARKS
1333 New Hampshire Ave. N.W. Suite 600
Washington, D.C. 20036
(202) 452-4836

EXHIBIT A
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____ 1992, by and between Logos Broadcasting Corporation ("Logos") and KCBX, Inc. ("KCBX").

WHEREAS, Logos and KCBX each has on file before the Federal Communications Commission (the "Commission") applications for construction permits for a noncommercial FM broadcast station on Channel 207B, San Luis Obispo, California; and

WHEREAS, the parties' applications have been designated for hearing in a Hearing Designation Order; and

WHEREAS, the parties to this Agreement believe that the dismissal of KCBX' application will serve the public interest by allowing the expeditious grant of Logos' application, contributing to a more rapid implementation of the local noncommercial aural service to San Luis Obispo, California.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and subject to the approval of the Commission, the parties hereto agree as follows:

1. Dismissal of Application. Subject to the terms and conditions of this Agreement, KCBX agrees to dismiss with prejudice its pending construction permit application for Channel 207B in San Luis Obispo, California (File No. BPED-890619MH).

2. Payment to KCBX. Subject to the terms and conditions set forth herein, and in consideration of KCBX' agreement to dismiss its mutually exclusive application, Logos agrees, as provided below, to pay to KCBX the sum of NINETEN THOUSAND FIVE HUNDRED FIFTY-FOUR AND NO/100 DOLLARS (\$19,554.00), or such lesser amount as shall be approved by the FCC, as reimbursement for KCBX' legitimate and prudent expenses, as set forth in paragraph 4 below.

3. Commission Approval. The provisions of this Settlement Agreement are subject to approval by the Commission. The parties agree to expeditiously file with the Commission all pleadings, affidavits and other supporting documents, in proper form, required by Section 73.3525 of the Commission's Rules and Regulations, or other rules or policies which may be applicable, including but not limited to the Verified Statements included in Attachment A. The parties also agree to take such other and further action as may be reasonably required to carry out the purpose, terms and conditions of this Agreement. Should the Commission decline to approve any provision of this Agreement, the parties agree that they will promptly make individual and joint efforts to resolve the objection.

4. Payment Procedures. The sum owed KCBX will be payable as follows:

a. Payment at Closing. At Closing, as hereinafter defined, Logos shall pay KCBX TEN THOUSAND AND NO/100 DOLLARS (\$10,000), or such lesser amount as shall be approved by the FCC, by cashier's or certified check.

b. Further Payments. Should the amount approved by the FCC exceed \$10,000.00 then, in that event, following Closing Logos shall pay KCBX by cashier's or certified check on the first day of each subsequent month ONE THOUSAND AND NO/100 DOLLARS until the amount owed pursuant to paragraph 2 above shall be paid in full, provided, however, that the last payment may be less than \$1,000.00 to match the amount approved by the Commission.

c. Closing. Closing shall occur within three (3) business days after the FCC order approving this Settlement Agreement, dismissing KCBX' application, and granting Logos' application becomes a Final Order. A Final Order means an FCC order which has become final as defined in section 1.302 of the Commission's rules and regulations.

5. Benefit. This Agreement shall inure to the benefit of and be binding upon, the parties hereto, their. successors and assigns.

6. Remedies. Upon receiving notice that the other party has committed a material breach of this agreement, and such breach is not cured within ten (10) days, the aggrieved party may declare

this Settlement Agreement terminated and of no further force and effect, extinguishing any further obligations that party may have under the Agreement. The parties acknowledge that the opportunity to operate on Channel 207B is unique and therefore the parties may, at their option, enforce any breach of this Agreement by seeking specific performance of the Agreement in the appropriate forum. Election by either party of this equitable right of specific performance shall be in lieu of any claim to damages.

7. Notices. Any notices required by this Agreement shall be effective if sent by certified mail, return receipt requested, postage prepaid as follows:

If to Logos:	Joseph E. Dunne III, Esq. May & Dunne, Chartered Suite 520 1000 Thomas Jefferson Street, N.W. Washington, D.C. 20007
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If to KCBX:	Wayne Coy, Jr. Esq. Cohn & Marks 1333 New Hampshire Ave., N.W. Suite 600 Washington, D.C. 20036
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8. Governing Law. This Agreement and all matters incident thereto are to be governed and construed according to the law of District of Columbia and any action in law or equity taken with regard to the terms and provisions of this agreement shall be brought in District of Columbia.

9. Entire Agreement. This Agreement constitutes the entire understanding between the parties and agreements, rights and obligations between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings, agreements, rights or obligations other than those expressly set forth herein. No modification, amendment or extension of this agreement or waiver of any provision of this agreement, in whole or in part, will be valid unless in writing signed by all the parties hereto.

10. Heading. The headings contained in this Agreement are inserted for purposes of convenience only and will be given no effect in the construction or interpretation of this Agreement.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

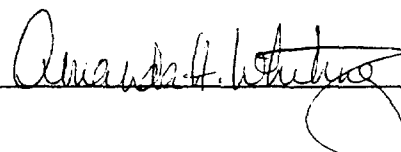
IN WITNESS WHEREOF, the undersigned parties have duly executed this instrument as of the date above written.

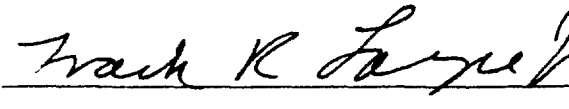
LOGOS BROADCASTING CORPORATION

Witness: _____

By: _____
Dan M. Lemburg, President

KCBX, INC.

Witness: 

By: 

9. Entire Agreement. This Agreement constitutes the entire understanding between the parties and agreements, rights and obligations between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings, agreements, rights or obligations other than those expressly set forth herein. No modification, amendment or extension of this agreement or waiver of any provision of this agreement, in whole or in part, will be valid unless in writing signed by all the parties hereto.

10. Heading. The headings contained in this Agreement are inserted for purposes of convenience only and will be given no effect in the construction or interpretation of this Agreement.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have duly executed this instrument as of the date above written.

LOGOS BROADCASTING CORPORATION

Witness: _____

By: 
Dan M. Lemburg, President

KCBX, INC.

Witness: _____

By: _____

ATTACHMENT A

STATEMENTS REQUIRED BY SECTION 73.3525

VERIFIED STATEMENT

I, Dan M. Lemburg, do hereby state under penalty of perjury of the laws of the United States that the following is true and accurate:

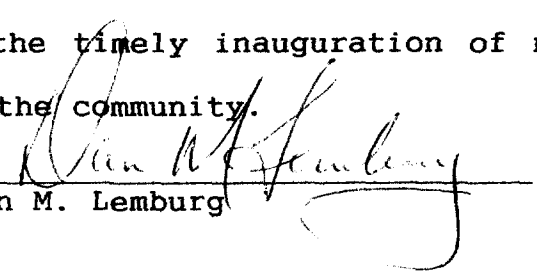
1. I am the president of Logos Broadcasting Corporation ("Logos").

2. Logos is an applicant for a construction permit for a new noncommercial FM station on channel 207B at San Luis Obispo, California, File No. BPED-910219MJ).

3. No consideration has been promised or will be given to KCBX, Inc. or its principals to dismiss its application, except as provided for in the attached Settlement Agreement.

4. Logos' application was not filed for the purpose of reaching a settlement agreement or any other such agreement with KCBX or any other person or entity.

5. The Settlement Agreement is in the public interest because it removes the mutual exclusivity between the applicants for the frequency which will serve San Luis Obispo, allowing the speedy grant of Logos' application and the timely inauguration of new aural service to the residents of the community.



Dan M. Lemburg

Executed on this 7th day of November, 1992

VERIFIED STATEMENT

I, Frank Lanzone, Jr. am the President

of KCBX, Inc. (KCBX), and I do hereby state under penalty of perjury of the laws of the United States that the following is true and accurate:


1. KCBX is an applicant for a construction permit for a new noncommercial FM station on channel 207B at San Luis Obispo, California (File No. BPED-890619MH).

2. No consideration has been promised or will be given or received by KCBX or by its principals to obtain the dismissal of KCBX' application, except as provided for in the attached Settlement Agreement, and such consideration is strictly limited to KCBX' legitimate and prudent expenses as defined by the policies and rules of the Federal Communications Commission, of \$18,000.00, or such lesser amount as approved by the FCC. An affidavit or verified statement setting forth those expenses will be separately prepared and filed.

3. KCBX' application was not filed for the purpose of reaching a settlement agreement or any other such agreement with Logos Broadcasting Corporation, or any other person or entity.

4. The Settlement Agreement is in the public interest because it removes the mutual exclusivity between the applicants for San

Luis Obispo, allowing the more expeditious inauguration of new aural service to the residents of the community.


FRANK R. LANZONE, SR.

Executed on this 9th day of December 1992.

ATTACHMENT B
KCBX' EXPENSES



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
RADIO AND TELEVISION

ROBERT L. HAMMETT, P.E.
EDWARD EDISON, P.E.
Consultants to the Firm

WILLIAM F. HAMMETT, P.E.
HARRISON J. KLEIN, P.E.
DANE E. ERICKSEN, P.E.
GERALD E. SPILLMAN, P.E.
GERHARD J. STRAUB, P.E.
STANLEY SALEK
NATHAN HAMILTON

BY FACSIMILE 805-781-3025

November 23, 1992

Mr. Frank R. Lanzone, Jr.
President & General Manager
FM Station KCBX
4100 Vachell Lane
San Luis Obispo, California 93401

Dear Frank:

As you requested, we have reviewed the history of the assistance we have provided for your efforts to secure a second FM channel in San Luis Obispo. This letter certifies that Hammett & Edison, Inc. has invoiced a total of \$8,417.75 on this project, from its inception in 1989 through October 31, 1992, and there are no accrued charges yet unbilled. To date, we have received payments totaling \$7,946.25 from KCBX against these invoices, with just the most recent invoice for \$371.50 remaining to be paid.

I am sorry that you will not have been successful in this effort, but we appreciate the opportunity to have been of service. Wishing you all the best, I remain

Sincerely yours,

William F. Hammett
President

cc: Wayne Coy, Jr., Esq. - BY FACSIMILE 202-293-4827

Telephone (805) 541-1915

Law Offices
Stephen Nathan Dorsi

1026 Chorro Street - P.O. Box 1253
San Luis Obispo, California 93406

November 24, 1992

FRANK R LANZONE JR
KCBX INC
4100 VACHELL LANE
SAN LUIS OBISPO CA 93401

RE: APPLICATION FOR SECOND FM CHANNEL IN SAN LUIS OBISPO

The following services have been provided since 1987 in connection with the application for a second FM channel in San Luis Obispo:

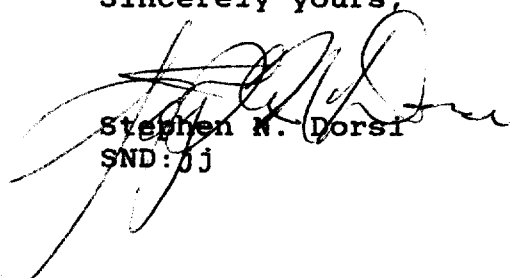
October 1986 thru September 1987 - 7 hours @ \$105	\$ 735
October 1987 thru September 1988 - 5 hours @ \$120	600
October 1988 thru September 1989 - 5 hours @ \$135	675
October 1989 thru September 1990 - 7 hours @ \$135	945
October 1990 thru September 1991 - 14 hours @ \$150	2,100
October 1991 thru September 1992 - 18 hours @ \$150	2,700
October 1992 thru November 1992 - 3 hours @ \$150	450

Total: \$8,205

All accrued charges have been billed.

The entire balance of \$8,205 remains unpaid.

Sincerely yours,



Stephen N. Dorsi
SND:jj

LAW OFFICES

COHN AND MARKS

STANLEY S. NEUSTADT
STANLEY B. COHEN
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
IAN D. VOLNER
LAWRENCE N. COHN
RICHARD A. HELMICK
BRIAN M. MADDEN
WAYNE COY, JR.

N. FRANK WIGGINS
MARK L. PELESH
J. BRIAN DE BOICE
ALLAN ROBERT ADLER

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS

SUSAN V. SACHS
APRIL McCLAIN-DELANEY
JOHN R. PRZYPYSZNY
MELINDA K. SKINNER
MICHELLE M. SHANAHAN*

*MEMBER PENNSYLVANIA BAR ONLY

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036-1573

TELEPHONE (202) 293-3860
CABLE COMAR-WASHINGTON, D. C.
TELECOPIER (202) 293-4827

DIRECT DIAL: (202) 452-4836

December 10, 1992

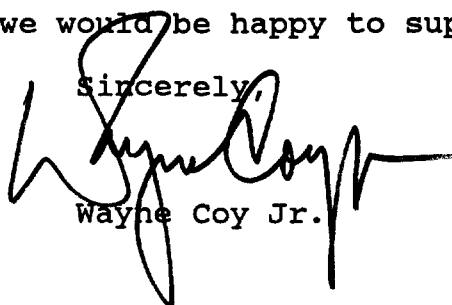
Mr. Frank Lanzone
Station KCBX
4100 Vachell Lane
San Luis Obispo, CA 93401

Dear Frank

At your request I have reviewed our firm's time records with respect to assistance, advice and counsel, in support of your efforts to secure a second noncommercial FM station in San Luis Obispo. I find we have recorded 16.75 hours at \$175.00/hour for a total of \$2,931.25, covering work for the past 17 months.

Should you need further detail we would be happy to supply it.

Sincerely,



Wayne Coy Jr.

CERTIFICATE OF SERVICE

I, Brian Claydon, a law clerk in the offices of May & Dunne, Chartered, hereby certify that on this 11th day of December, 1992, I caused the foregoing "Joint Request for Approval of Agreement" to be hand-delivered to the following:

The Honorable Joseph P. Gonzalez
Administrative Law Judge
2000 L Street, Room 221
Washington, D.C. 20554

Gary Schonman, Esq.
Hearing Division, Mass Media Bureau
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Wayne Coy, Jr., Esq.
Cohn & Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036
(Attorney for KCBX, Inc.)

By: 
Brian Claydon